

**United States Postal Service and Frank J. Silvia  
National Association of Letter Carriers, Branch No.  
193 and Frank J. Silvia  
National Association of Letter Carriers and Frank  
Silvia.** Cases 32–CA–9189(P), 32–CB–2785, and  
32–CB–2820

April 30, 1991

**DECISION AND ORDER**

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On September 30, 1988, Administrative Law Judge Earledean V.S. Robbins issued the attached decision. The Respondent Postal Service and the Respondent National Association of Letter Carriers (the Union)<sup>1</sup> filed exceptions and supporting briefs; the General Counsel filed an answering brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions only to the extent consistent with this decision.

1. The judge found that the Postal Service violated Section 8(a)(1) and the Union and Branch 193 violated Section 8(b)(1)(A) by failing to provide employees, on request, with the anniversary dates of their authorizations for deduction of union dues. We disagree.

The facts, as found by the judge or as uncontroverted in the record, follow. The Postal Service and the Union were at all relevant times parties to a national agreement that did not require unit employees to join the Union but did require the Postal Service to check off dues for union members who had authorized checkoff. The Union, in turn, required all members to sign a form 1187 authorizing checkoff, which was filed with the Postal Service. An 1187 authorization is irrevocable for successive 1-year periods unless revoked by the member between the 20th day and the 10th day before the member's "anniversary date," the date stamped on the form 1187 by the Postal Service's regional Postal Data Center (PDC) at the time of re-

ceipt.<sup>3</sup> To revoke the 1187 checkoff authorization, an employee must fill out form 1188, obtainable through the Postal Service, and submit it to the postmaster (or equivalent) at the facility where he or she works. The postmaster then signs and dates the form 1188 and it is forwarded to the PDC. If the PDC receives the form 1188 within the window period, it processes the employee's revocation. If the PDC receives the revocation outside the window period, it returns it to the postmaster together with the anniversary date. The events giving rise to the instant allegations were set in motion in February 1987,<sup>4</sup> when eight unit employees at the Milpitas, California post office, including Silvia, Camacho, and Marley, met to discuss concerns about the Postal Service's Employee Involvement Program (EIP). The employees placed a letter in the facility suggestion box urging that the EIP be discontinued and invited Milpitas Postmaster Cicala to meet with them. Cicala initially agreed to a meeting but changed his mind when he discovered that many employees wished to attend. On May 27, Marley, Camacho, and another employee collaborated on another note suggesting that the EIP be discontinued. Camacho initialed the note, which was placed in the suggestion box.

Employee meetings critical of the EIP and the Union's involvement in it continued. At the May 21 meeting, all employees present signed a letter of resignation from the Union and completed, individually, form 1188s, revoking their checkoff authorizations. Silvia collected the forms and mailed them as a group to the Minneapolis PDC about June 9.<sup>5</sup> In due course, the data center sent the unprocessed form 1188s to Cicala for processing. Cicala testified that when he received the forms he realized that many of the forms would not be timely if he resubmitted them, so he asked Branch 193 President Cortese for the resignees' anniversary dates. Cortese replied that he did not have access to the dates. Cicala then called the PDC in San Jose, which instructed him to reproduce form 1188, which had been revised on May 28, from the postal service bulletin so that the employees could resubmit their revocations. Cicala returned the 1188s to the employees, with a note reading in part: "The attached SF 1188 and instructions on the proper procedure are re-

<sup>1</sup>Although the complaint alleged that Branch 193 and the Union separately violated Sec. 8(b)(1)(A), in her findings and conclusions of law, the judge appeared to treat the national organization and the local as the same entity. The Union has excepted to this aspect of the judge's reasoning. We find merit in the Union's exception and will analyze separately the facts relating to the allegations that Branch 193 and the Union refused to supply employees with information.

<sup>2</sup>The Postal Service has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup>The judge's decision describes the anniversary date and the maintenance of records of that date in greater detail. Briefly, the judge found that prior to May 1987, the dated form 1187 was destroyed by the PDC once the date had been entered into the computer and a record of the date was not forwarded to the Union, the branch of the Union, or the employing installation.

<sup>4</sup>All subsequent dates are in 1987.

<sup>5</sup>It is unclear whether Silvia knew that the proper procedure was to submit the form 1188s to the postmaster. At one point in his testimony, Silvia stated that he did not submit the forms to Cicala because of concerns about whether Cicala would be efficient in processing them; he later stated that he thought that the forms were to be sent directly to the PDC.

turned to you for compliance with Postal Bulletin 21621 dated 5/28/87.”<sup>6</sup>

After he got his form 1188 back from Cicala, Silvia asked him for a revised form 1188 and for the anniversary dates of all the resignees. Cicala told Silvia that he did not have the anniversary dates or the revised forms, that he did not know when he would get the forms, and that Silvia should see the Union for the dates. Later that day Silvia received a revised form 1188. Marley similarly sought his anniversary date unsuccessfully from his supervisors and other management officials. In response, Cicala told him that he had checked his personnel file and it did not contain the date. Marley also asked for and later received a revised form 1188.

The judge found that Cicala unlawfully withheld from unit employees information regarding the proper procedure for obtaining the anniversary dates. The judge, in finding that Cicala could have provided the employees with the dates, cited testimony by Personnel Assistant Medlin of the San Jose personnel office that clerks in that office will inform callers of anniversary dates over the telephone. The judge also pointed to Cicala’s failure to tell employees, when he returned the form 1188s, the proper procedure for processing them.

We disagree with the judge’s analysis. Assuming the Postal Service had a duty to provide employees with such information, we find that the General Counsel has not established that Cicala breached such a duty. In our view, the General Counsel has failed to show that Cicala had access to the dates or that he knew or should have known that employees could get the dates simply by telephoning San Jose. In fact, as noted above, the record contains uncontradicted evidence, and the judge found, that the Milpitas facility’s files did not contain the anniversary dates. Further, while we do not doubt Personnel Assistant Medlin’s statement that she answers telephone requests for the dates, we cannot infer from her testimony that the Postal Service has established such a policy, or even that the other clerks at the San Jose facility consistently divulge such information over the telephone. Thus, we find no evidence that Cicala knew or should have known of a “short-cut” for getting the dates and withheld it from employees. Further, we find that the General Counsel failed to demonstrate that Cicala withheld the information he did have for any meaningful length of time from any employee who requested it. In this regard, Marley and Silvia both testified that they asked Cicala for the revised form and that he stated that he did not have one. Both testified, however, that they received a copy of the form the same day. Cicala’s testimony that he put the form on Silvia’s desk is uncontroverted. Finally, we observe, contrary to the

judge, that Cicala’s note accompanying the returned form 1188s did give employees the information necessary to process the revocation, as it referred them to the appropriate postal bulletin. Accordingly, we dismiss this allegation of the complaint.

2. The complaint further alleged, and the judge found, that both Branch 193 and the Union violated Section 8(b)(1)(A) by failing to provide employees with information about their anniversary dates. Again, we disagree and dismiss these allegations.

As set forth by the judge and further developed in uncontroverted testimony, in early June, some weeks after Cortese had been informed of the resignations, Marley twice informed Cortese that he and others who had resigned from the Union were having problems processing the form 1188s and asked if Cortese could supply the anniversary dates. Cortese stated that he did not have the dates and told Marley that the proper procedure was to file the 1188 with the Milpitas post office, which would forward the form to the Postal Service, which in turn would either process the form or supply the date.<sup>7</sup> The judge reasoned that Cortese knew or should have known of the “short-cut” procedure for learning the anniversary dates outlined by Medlin, and that his failure to disclose this information had the effect of misleading employees. As in the case of Postmaster Cicala, we find no basis for concluding that Cortese either knew or should be charged with knowing about any other method of obtaining anniversary dates than the one he described to Marley.

With regard to the Union, on June 28 Silvia wrote the Union’s headquarters in Washington, D.C., seeking the anniversary dates for all those who had resigned from the Union and citing the appropriate postal bulletin. The Union’s treasurer responded by informing Silvia that it had referred the matter to a regional union office. In that regard, Dale Hart, assistant administrator for the Union’s San Francisco region, testified without contradiction that Silvia’s letter was forwarded to him and that he had concluded after reading the letter and discussing the matter with Cortese that the problem, for all practical purposes, had been resolved, as the letter referred explicitly to the postal regulation describing the procedure for revoking the checkoff authorization. We do not find unreasonable either the Union’s response to Silvia’s letter or Hart’s investigation of the matter and conclusion that the problem had been solved. Hart ascertained correctly that the employees had all the information at NALC’s disposal. Thus, we do not find that the Union withheld information from employees and we do not find that the Union’s handling of Silvia’s request coerced employ-

<sup>6</sup>Sec. 913.51 (Voluntary Revocations) of Postal Bulletin 21621 outlines the procedure for revoking 1187-checkoff authorizations.

<sup>7</sup>Silvia sent Cortese a certified letter asking for the anniversary dates. Cortese refused to accept the letter. The General Counsel has not alleged that Cortese’s failure to respond to Silvia’s letter contributed to an unlawful pattern of conduct.

ees in the exercise of the Section 7 right to revoke checkoff authorizations. Thus, we dismiss the 8(b)(1)(A) allegations against Branch 193 and the Union.

3. The complaint also alleges, and the judge found, that the Postal Service violated Section 8(a)(1), (2), and (3) of the Act by continuing to withhold and remit dues from the resignees' paychecks after they resigned from the Union. The complaint additionally alleges, and the judge found, that the Union and Branch 193 have violated Section 8(b)(1)(A) of the Act by continuing to accept union membership dues withheld from employees' paychecks after they resigned from the Union. We reverse.

In *Postal Service*, 302 NLRB 332 (1991), the Board reconsidered the effect of an employee's resignation from union membership of his dues-checkoff authorization under the Postal Reorganization Act (PRA). Relying on the "plain meaning of the irrevocability provision" of Section 1205(a) of the PRA, and using legislative history and prior governing authority for guidance, the Board concluded that, unlike Section 302 of the Labor Management Relations Act, the PRA *requires* a period of checkoff irrevocability. The Board determined that Section 1205 requires the Postal Service to honor a checkoff authorization's irrevocability period if it is not for more than a year, notwithstanding the employee's resignation from union membership during that period. Accordingly, it is not a violation of an employee's Section 7 rights for the Postal Service or labor organizations representing postal employees to continue to give postresignation effect to a dues-checkoff authorization if the checkoff revocation is not made within the prescribed time periods for revocation, and if the irrevocability period is not more than a year.

Accordingly, we find that the Respondents did not violate the Act as alleged.

4. The judge also found that the Postal Service violated Section 8(a)(3) and (1) by removing Camacho from the 204B training program in retaliation for engaging in protected concerted activities. The Postal Service excepts, arguing that by virtue of his participation in that program, Camacho was a statutory supervisor. The Postal Service argues that the Board has established that individuals in the 204B training program are supervisors who have "the same authority as permanent supervisors and can discipline employees and adjust grievances on behalf of the Postal Service." *Letter Carriers*, 240 NLRB 519, 519 (1979); see also *Postal Service*, 275 NLRB 360 (1985). We find merit in this exception and we dismiss the allegation.

The 204B program is an on-the-job training program in which unit employees substitute for supervisors under the guidance of a regular supervisor. Employees in the 204B program are paid at the supervisory rate and punch a separate timeclock when performing 204B

duties. The record discloses that 204B trainees do the mail count, assign help for carriers not willing to work overtime, compute each carrier's projected return time, and assign carriers to work overtime when necessary. Although 204B program trainees have the authority to discipline unit employees, the trainees at the Milpitas facility have not done so as Cicala did not require them to discipline employees until late in the 204B program, because he considers that the most difficult aspect of the job.<sup>8</sup> In all other respects, however, the record indicates that 204B trainees at Milpitas perform all the tasks of permanent supervisors.

In the spring of 1987 Cicala encouraged Camacho to apply for the 204B program. Camacho was accepted and began work as a 204B trainee about April 16. He received a favorable evaluation of his 204B work in mid-May. On June 1 Cicala dismissed Camacho from the program on learning that Camacho had signed the suggestion, described above, that the EIP be disbanded. Cicala told Camacho that his participation in the suggestion that a management program be discontinued indicated that Camacho could not be loyal to management.

The judge rejected Cicala's testimony that he removed Camacho from the program because he was dissatisfied with his performance and concluded that removing Camacho from the program violated Section 8(a)(3) and (1). She rejected the Postal Service's arguments that 204B trainees are statutory supervisors. She found that the duties of the 204B trainees are routine and do not require independent judgment and that there was no evidence that these employees had the authority to discipline other employees or to adjust their grievances. In our view, the Postal Service has demonstrated that the 204Bs at Milpitas, no less than the 204Bs at other installations, have been invested by the Postal Service with the authority to discipline employees and adjust their grievances. We find that the evidence adduced by the General Counsel that Cicala did not require the 204B trainees to discipline employees at the early stages of their training is not sufficient to distinguish this case from *Letter Carriers*, supra, in which the Board held that 204B trainees are supervisors. Thus, "[o]nce [an employee] becomes a temporary supervisor, he is no longer an 'employee' within the meaning of Sec. 2(3) of the Act." 240 NLRB 519, 523 fn. 18. Accordingly, Cicala's action of dismissing Camacho from the program does not constitute restraint or coercion of employees in violation of Section 8(a)(3), as Camacho at that point had lost the pro-

<sup>8</sup>The record also indicates that Cicala was not carrying out Postal Service policy in this respect, as he testified without contradiction that he was cautioned by postal service management not to hesitate to permit 204B's to discipline unit employees.

tection of the Act.<sup>9</sup> Accordingly, we dismiss this allegation of the complaint.

#### AMENDED CONCLUSIONS OF LAW

1. The United States Postal Service is subject to the jurisdiction of the National Labor Relations Board by virtue of 39 U.S.C. § 1209 (a).

2. The National Association of Letter Carriers and National Association of Letter Carriers, Branch 193 are labor organizations within the meaning of Section 2(5) of the Act.

3. By interrogating employee Lumont Gibson concerning union or other protected concerted activities, the Postal Service has violated Section 8(a)(1) of the Act.

#### ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Milpitas, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning union or other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Milpitas, California, copies of the attached notice marked "Appendix."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>9</sup>We do, however, agree with the judge that the Postal Service violated Sec. 8(a)(1) by coercively interrogating employee Gibson about his and others' union or protected concerted activities, in connection with Gibson's efforts to join the program. In this regard, we note that the interrogation of Gibson occurred before he entered the program. Thus, he was still an "employee" under Sec. 2(3) at the time.

<sup>10</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coercively interrogate you concerning your union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

#### UNITED STATES POSTAL SERVICE

*Karen Clopton, Esq.* and *Charles Pernal, Esq.*, for the General Counsel.

*Arline Tyler, Esq.*, of San Bruno, California, for Respondent Postal Service.

*Devon Lee Miller, Esq.*, of Washington, D.C., for Respondent Union.

#### DECISION

#### STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge. This case was heard before me in Oakland, California, on April 26 and 27, 1988. The original charge in Case 32-CA-9119(P) was filed by Frank J. Silvia, an individual (Silvia), and served on Respondent United States Postal Service (Postal Service) on September 25, 1987, and a first amended charge in Case 32-CA-9189(P) was filed by Silvia on November 6, 1987, and served on the Postal Service on November 9, 1987. The charge in Case 32-CB-2785 was filed by Silvia and served on National Association of Letter Carriers, Branch No. 193 (Branch 193) on September 3, 1987. The charge in Case 32-CB-2820 was filed by Silvia and served on National Association of Letter Carriers (NALC), on October 26, 1987. The amended consolidated complaint, which issued on February 19, 1988, alleges that the Postal Service has violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), and that Branch 193 and NALC have violated Section 8(b)(1)(A) of the Act.

The basic issues herein are:

(1) Whether the Postal Service violated Section 8(a)(1) and (3) of the Act by removing Anthony Camacho from the 204B program because of his protected concerted activity.

(2) Whether the Postal Service violated Section 8(a)(1) and (2) of the Act by deducting, and remitting to the Union, union dues after employees had resigned from the Union.

(3) Whether the Postal Service violated Section 8(a)(1) of the Act by interrogating an employee and by refusing to provide employees, upon their request, with the anniversary dates of their authorizations for deduction of union dues.

(4) Whether NALC and Branch 193 (collectively called the Union), violated Section 8(b)(1)(A) by accepting union membership dues withheld by the Postal Service from em-

ploye's pay notwithstanding the employees' resignation from membership in Branch 193, and by failing and refusing to provide employees, upon their request with the anniversary dates of their authorizations for deduction of union dues.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Postal Service provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including a facility in Milpitas, California, which is the only facility involved in this proceeding. The Board has jurisdiction over Respondent Postal Service by virtue of the provisions of Chapter 12, Section 1209, of the Postal Reorganization Act, 39 U.S.C. Section 101 (PRA).

##### II. LABOR ORGANIZATION

The complaint alleges, Respondents admit, and I find that NALC and Branch 193, each is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Procedure for Authorization and Revocation of Payroll Deduction for Union Dues*

The Postal Service and are NALC parties to a 3-year collective-bargaining agreement which expires in 1990 and covers, inter alia, employees at the Milpitas post office. The Milpitas post office is in the jurisdiction of Branch 193. The contract does not require employees to become members of the Union, however, it does require that the Postal Service deduct, and remit to the Union, union dues from the pay of employees who are members of the Union and have signed an authorization for deduction of union dues, which shall be irrevocable for a period of not more than 1 year. The contract also provides the language to be used in such authorization.

As a condition of membership, the Union requires each applicant for membership to sign a Form 1187, Authorization for Deduction of Dues, which provides, inter alia:

###### AUTHORIZATION FOR DEDUCTION OF DUES

. . . .

I hereby assign to the National Association of Letter Carriers, AFL-CIO from any salary or wages earned or to be earned by me as your employee (in my present or any future employment by you) such regular and periodic membership dues as the union may certify as due and owing from me, as may be established from time to time by said Union. I authorize and direct you to deduct such amounts from my pay and to remit same to said Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect, which includes a \$8.00 yearly subscription for the Postal Record as part of the membership dues.

*This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year.*

The form also has a space for notation of date of delivery to employer. This date of delivery is commonly referred to as the anniversary date.

The Form 1187 is signed by the new member in quadruple and given to a Branch 193 representative. According to Anthony Cortese, president of Branch 193, the financial secretary of Branch 193 makes an unofficial notation of the date of delivery to the employer for the sole purpose of monitoring whether the new member's dues deductions are remitted to the Union in a timely fashion. Thereafter, the original of the Form 1187 is delivered to the Postal Service personnel office by either the financial secretary or Cortese. The date of delivery notation made by the financial secretary does not always correspond with the actual delivery date. The second copy is sent by the secretary of Branch 193 to NALC national headquarters. The third copy is kept by Branch 193 and the fourth copy is sent to the member with a copy of the Branch 193 bylaws and other materials.

When the Form 1187 is delivered to the Postal Service's local DDE-DR office (Distributed Data Entry/Distributed Reporting), which functions as a personnel office, it is machine date-stamped. That date is the member's official anniversary date. Prior to May 1987, once DDE-DR entered the information from the Form 1187 into the computer and verified it, the Postal Service destroyed its copy of the form. However, since May 1987, DDE-DR sends the original of a Form 1187 to the installation where the member is employed for filing in the employee's personnel file.<sup>1</sup> The Branch also destroys its copy of the Form 1187 once the membership is processed through the NALC headquarters. NALC headquarters destroys its copies of the Form 1187 after 3 years. During the period of time relevant herein, the Postal Service never notified the Union of a member's anniversary date.<sup>2</sup>

As set forth above, the authorization for dues deduction can only be revoked during a window period of not more than 20 days and not less than 10 days prior to a member's anniversary date. If an employee wishes to revoke his/her dues deduction authorization, he/she must obtain a copy of Form 1188, "Cancellation of Payroll Deductions For Labor Organization Dues," from the Postal Service and submit the signed form to the head of the installation at which he/she works. Also, the employee, according to Postal Service assistant Patty Medlin, must send a copy of the signed form to NALC headquarters. For the past 3 years, employees have been able to obtain their anniversary dates by telephoning the DDE-DR office.<sup>3</sup> Also, if a member submits a Form 1188

<sup>1</sup> Currently the Form 1187 is kept in the employee's personnel folder for 2 years.

<sup>2</sup> Currently these anniversary date are made available to the Union.

<sup>3</sup> There is no evidence that employees were informed of this procedure. Prior to then, this information could only be obtained from the Postal Data Center.

outside of the appropriate window period, the form is returned to the employee with a notation of the employee's anniversary date and instructions that the form can be resubmitted within 10 to 20 days of that date.

#### *B. The Resignations from the Union*

On February 19, 1987, eight employees from the Milpitas Post Office met after work to discuss some of their concerns with regard to working conditions. The principal concerns discussed in this and subsequent meetings were the Employment Involvement Program (EI), and the perceived lack of representation by the Union. Among those present at the meeting were Anthony Camacho, Frank Silvia, and Gerald Marley. During the course of this meeting the employees signed a letter, the body of which reads:

I suggest due to repeated failure to address meaningful issues, and the lack of majority support, that we, the employees of the Milpitas post office and members of the Carrier Union, reject and discontinue the EI program in its entirety. I urge at least a public vote to confirm or deny this suggestion.

Each of the eight employees signed the letter, and it was placed in the EI suggestion box. The employees at this meeting also decided to invite Postmaster Vincent Cicala to meet with them to discuss various problems.

On the following morning, Silvia told Cicala that a group of employees would like to meet with them to discuss certain events that had occurred in the preceding weeks. Cicala agreed, but said the meeting could not be held on the clock. He suggested meeting at a pizza place and promised to buy the beer. Silvia agreed and said he would relay the information to the group.

At a meeting held the following day, the group of employees accepted Cicala's suggestion that they meet in pizza parlor. Silvia arranged a room at the Round Table Pizza Parlor in Milpitas and posted signs announcing the meeting. However, when Silvia told Cicala he had arranged a meeting to be held later that week, Cicala said he understood that a lot of employees had expressed an interest in the meeting and he would not meet in a town hall atmosphere. Silvia said fine, there would not be a meeting. Cicala then accused Silvia of being responsible for the suggestion to disband the EI program. He said the suggestion was irresponsible and demonstrated that only management was supporting the program not the employees.

Cicala further said Silvia had been very pushy, in his past dealings as a union officer,<sup>4</sup> that he liked Silvia but did not like what he stood for and what he did. Cicala said he was aware Silvia felt that Cicala and Branch 193 President Anthony Cortese worked together too closely. He said it did not matter what Silvia thought, that he would continue that relationship as long as it provided him the results he desired. Cicala further said the EI program was very important to the Postal Service and would remain in effect regardless of what employees thought and despite whether Silvia liked it.

Another employee meeting was held on March 12. Approximately 26 employees were present. They discussed the attitude of management, the working conditions during the

past month, the inspection and audit the facility had recently undergone, and individual grievances. Three main problem areas were identified—Cicala's poor attitude, lack of representation by the Union, and the EI program which they felt did not meet its goals and objectives and did not provide them with any channel of communication. A majority of the employees present favored signing a letter suggesting that the EI program be disbanded or that a vote be held in this regard. However, one employee persuaded them they should try the program for 60 days, participate in the process by submitting suggestions and, if they did not receive an adequate response, they could take later action with regard to attempting to disband the program.

Another meeting was held on April 16. Approximately 24 employees attended. The same issues were discussed as had been discussed in the previous meetings. They also discussed the fact that the Union had not responded to a letter from the group which was sent following the March 12 meeting.

Another meeting was held on May 21. Thirty-six clerks and letter carriers from the Milpitas facility were present. By that time, Cortese had responded to the group's March 12 letter. They discussed that response, and a statement prepared by employee Gerald Marley in response thereto. Cortese's letter intimated that the problems at the facility centered around Silvia rather than the employees. Marley's proposed response essentially defended Silvia. During the course of that meeting, the employees decided to resign from the Union, and all of the employees present signed a resignation dated May 21, 1987, which reads:

The following members of Branch 193, NALC, effective this date resign as members of this union

A full dues return is requested for any periods prior to revocation of dues withholding through the Data Center.

Each employee also filled out a Form 1188 at that meeting. Marley collected the Form 1188s and assembled them into a package for mailing to the Postal Data Center in Minneapolis, Minnesota.<sup>5</sup>

On March 27 Marley, Camacho, and employee Eldefonso Roldan presented the resignation petition to Cortese at a Branch 193 executive board meeting. According to Marley, Cortese looked at the resignation petition and handed it to Vice President Dan Laughin. Laughin asked, "What can we do to settle these problems?" and some general discussion ensued. Marley then asked Cortese if he was going to accept the petition and honor the date on the petition for the purpose of dues refunds to the member who signed it. Cortese said the Union would honor that date. He further said, "We don't need your damn dues and we don't need you and if you want out, you are out." He again said he fully intended to refund dues as of the date on the petition.

Cortese admits that on May 21 he agreed that he would honor the resignations. He also admits he saw the second sentence of the resignation petition which reads: "The full dues return is requested for any periods prior to revocation of the dues withholding through the Data Center." According to him, when Marley handed him the petition he said, "Hey, if that's what you guys want, you're gone." He ad-

<sup>4</sup> Silvia had been a branch president, branch vice president, and union steward.

<sup>5</sup> The account of these meetings is from the uncontradicted testimony of Gerald Marley, which I credit.

mits he may have said, "If you want to be a scab, you're going to be a scab."

After the meeting, Marley, Camacho, and Roldan went to Marley's house to discuss the events of the evening. They also discussed the EI program and drafted another suggestion which was written by Roldan. Marley suggested that Camacho sign it, and Camacho placed the initials "A.J." at the bottom of the page, referring to his first and middle name, Anthony John.

### *C. The Attempted Revocation of the Authorizations for Payroll Deduction of Union Dues*

On about June 9 Silvia sent 30 signed copies of Form 1188, the Postal Service's dues-checkoff revocation form to the Postal Service Data Center in Minneapolis, Minnesota, with copies to Branch 193.<sup>6</sup> The forms were returned by the Minneapolis Data Center to Cicala in his capacity as installation head. According to him, when he received the 30 Form 1188s from the Data Center, he realized that all of them obviously would not fall within the window period so that, even upon resubmission on the revised form, some of the forms would ultimately be returned. He therefore called Cortese and asked if he could supply the anniversary dates. Cortese said he did not have the dates. He then called the Personnel Office (DDE-DR) in San Jose and was told they could not comply with his request for a computer printout showing the anniversary dates. He was also advised that the revised Form 1188 should be reproduced from the Postal Bulletin so that each employee, who wished to do so, could resubmit a revised Form 1188 and, as each form was received, the DDE-DR office would process it.

On June 18, Cicala returned to each employee his signed Form 1188 with a note stating, "The attached SF 1188 and instructions on the proper procedure are returned to you for compliance with Postal Bulletin 21621 dated 5/28/87. You or your representative should submit the proper form." Thereafter, Silvia secured, from his supervisor Kathy Sheehan, a copy of the referenced postal bulletin which provides at paragraph 913.5.51(b):

b. An employee using the revised SF 1187 described in 913.412 may only cancel by submitting written notice (Form 1188) to the installation head and via certified mail to the organization's national office not more than 20 days and not less than 10 days prior to the anniversary date (date of the delivery to employer). Form 1188 must be date stamped upon receipt. It is this date that will be used to determine if the cancellation request was received in accordance with the above requirements. Example: Assume an anniversary date of December 1. The employee signs and dates Form 1188 on November 10 and certifies that Copy 3 of the form has been sent to the organization's national office by certified mail. To comply with the 20/10 day requirement specified above, the employing office must receive and date-stamp part B of the form between November 11 and November 21. If the DDE/DR site receives all three copies of Form 1188 the entire form is returned to the employee with the reason(s) noted. The

20/10 day rule is a requirement of the revised SF 187, which can be waived only by the union.

Nothing in that section, or in the bulletin, mentions the procedure described to Cicala that if the forms were submitted outside of the window period they would be returned to the employee with a notation showing the employee's anniversary date. Cicala admits that he has not given any employee at the Milpitas facility his/her anniversary date.

On June 18 Silvia asked Cicala for copies of the revised Form 1188. Cicala said he did not have the revised forms and did not know when he would be able to obtain them. Silvia asked Cicala if he had the anniversary dates. Cicala said, "I don't have that information." Silvia asked Cicala if he would attempt to secure the information. Cicala said, "That information is not in your files. I don't have that information." Silvia asked Cicala to check with his superiors over at the personnel office. Cicala replied, "See your union." However, later that day when Silvia returned to the facility from his street duties, a photocopy of the Form 1188 in the postal bulletin was on his desk. He does not know who put it there. The postal bulletin was effective May 28.

Marley testified that when his Form 1188 was returned to him, he asked a floor supervisor, either Mark Polk or Joe Haruchi, for his anniversary date, stating that he needed it in order to resign from the Union. Within 1 or 2 days, after he had received no information, he went to Manny Cisneros, who is second in command at the Milpitas facility, told him he wanted to resign from the Union and had requested his anniversary date from his floor supervisor but had not been provided with it. Marley asked if there was anything Cisneros could do. Cisneros said he would get back to him. Thereafter, Cicala approached Marley and said, "I understand you have requested your anniversary date. Marley agreed that he had. Cicala said, "I looked in your personnel file and it is not there." Marley said that seemed strange, that he thought the Postal Service was required to keep the anniversary date in the personnel file. Cicala said he knew nothing about any such rule and walked away.

Marley testified that he also requested his anniversary date from Cicala and asked Cicala for a revised Form 1188. He was given a photocopy of the form in the postal bulletin. According to Marley, the postal bulletin mentioned a multicopy form with copies to go to various places and the reproduction that was given to him was only one page. So when Cicala gave the photocopy to Silvia, Silvia said, "What good is this to me? It's only one page, and it's a photographic replica of something or other." He later received a Form 1188 that was not a photocopy. He does not recall from what source he received it but testified that it came neither from the Union nor from the Postal Service.

Marley further testified that, shortly after his Form 1188 was returned to him, he telephoned Cortese and left a message for Cortese to call him. When Cortese returned the call, Marley said certain members in the Milpitas facility were having a lot of problems with the Form 1188 in trying to resign from the Union and that they needed their anniversary dates. He then asked if Cortese could supply them with those dates. Cortese said, "I'm sorry, but we don't have them." Marley said, "I find that awfully strange." Marley then asked if Cortese still planned to refund dues to the resignees as of the date of the resignation petition. Cortese said, "No.

<sup>6</sup>Cortese admits that he received copies of the 1188s with a letter stating that the Form 1188s had been forwarded to Minneapolis.

There is something you have to understand. When it comes to dues, there is local and national dues and the local gets a very small percentage of what the actual dues are in the first place. If you guys have screwed up on your 1188s it's nobody's problem but your own and you are just going to have to go through channels." Marley said, "I think that's a bad attitude for a union president to be taking."

According to Cortese, about 10 days later he received a phone call from Marley, who indicated he was representing a group of employees. When Cortese returned Marley's telephone call, Marley said all of the Form 1188s had been returned to the resignees. Marley asked what they were supposed to do to get out of the Union, that they had not met their anniversary dates and the Postal Service would not provide them with these dates. Cortese said obviously, if the Postal Service said they were not meeting the anniversary dates, the Postal Service must have information as to what the dates were. He then informed Marley that the proper procedure was to file the Form 1188 at the Milpitas Post Office which would forward it to the San Jose DDE-DR; and, if it was submitted outside the window period, it would be returned with the anniversary date written on it. Marley asked if Branch 193 had the anniversary dates. Cortese said they did not, that the Postal Service had them. Marley asked when the deducted union dues would be refunded to them. Cortese said it was national policy that if a Form 1188 was submitted within the proper window period, deduction of union dues would stop. Cortese also testified that a signed Form 1188 is considered as a resignation from the Union.

On June 28 Silvia sent a letter to Richard O'Connell, secretary-treasurer of NALC, describing some of the difficulties the resignees had with Branch 193 and with the EI program. The letter further stated that the situation had reached the point where approximately 30 members had elected to terminate membership in the Union but that both the Union and the Postal Service had refused to furnish those members with the correct anniversary dates to be used for the Form 1188s. Silvia requested that O'Connell provide such dates. Attached to this letter was a list of employees headed, "The following members have elected to terminate membership in the NALC." The parties stipulated that this constituted the list of employees for whom Silvia was requesting anniversary dates. By letter dated July 9, O'Connell informed Silvia that his letter had been transmitted to William Young, a union representative in NALC's San Francisco region, so he could investigate the matter and be of assistance in helping to resolve any problems encountered by the membership. However, according to Silvia, he never received a response to his request for anniversary dates.

On June 28, Silvia also wrote a letter to Cortese in which he requested the correct anniversary dates for the resignees.<sup>7</sup> He made no further attempts to obtain the resignees' anniversary dates from Branch 193. According to Silvia, neither Respondent Union nor Respondent Postal Service furnished anniversary dates to the resignees. However, NALC supplied these dates to a Board agent on or about November 10.

Cortese testified that, to his knowledge, no other employees have had difficulty either learning their anniversary dates

or in processing the Form 1188. He contends that, if it had come to his attention that the problem was continuing, he would have made some telephone calls and filed a grievance so he could get the employees' anniversary dates for them. He admits Cicala asked him if he had the anniversary dates and that he told Cicala he did not have them but the Data Center did.

Cortese also testified that NALC Representative Dale Hart told him he had received a copy of a letter sent by a group of Milpitas employees to Richard O'Connell stating they were going to resign from the Union.<sup>8</sup> Cortese told Hart he had a problem with the Milpitas employees but this was not the real reason they were resigning. Also, Cortese thinks he told Hart he had spoken to Cicala regarding anniversary dates and may have told him that he had instructed Marley as to the proper procedure for submitting a Form 1188. Later Cortese learned that Hart was referring to the letter the group of employees had sent him and his response to them. Thereafter, according to Cortese, dues deductions for certain employees ceased so he thought the employee attempts to revoke their dues-deduction authorization had been resolved.

Silvia admits he considers himself fairly knowledgeable as to Postal Service regulations and with regard to the collective-bargaining agreement. According to him, he did not submit the Form 1188s to Cicala in accord with Postal Service regulation because it was the opinion of the employees at the meetings that submitting the forms to Cicala would delay matters since he had been providing roadblocks to whatever the employees attempted to accomplish. Silvia claims he was not aware that the forms should have been submitted to Cicala. According to him, he thought the requirement was that they be submitted to a Data Center.

Silvia resubmitted a Form 1188 in October in accordance with an estimate of his anniversary date determined by reviewing his pay stubs. The form was processed and returned to him by the San Jose personnel office with a notation that the correct anniversary date was September 29. Marley submitted a revised Form 1188 which was processed approximately a month prior to the hearing herein. At least three other resignees canceled their dues deduction, prior to November, by following the procedure described by Cortese and Cicala. However, several of the resignees did not resubmit Form 1188s even though their anniversary dates fell between the date the Union provided the Board agent with a list of anniversary dates and the date of the hearing herein.

#### *D. The Removal of Camacho from the 204B Program*

There are about 83 employees at the Milpitas Post Office, including approximately 55 or 58 carriers. In June there were approximately 47 or 48 carriers. There are two floor supervisors, Mark Polk and Kathy Sheehan. Employees in the 204B program, an on-the-job employee training program for prospective supervisors, substitute for regular supervisors but always work with another regular supervisor. There are no written guidelines describing this program nor any formal training. The 204B trainee counts mail, inputs that data into the computer, completes forms such as late leaving reports<sup>9</sup>

<sup>7</sup> Cortese never received the June 28 letter as he refused to accept it from the Postal Service because he "felt that this letter was just going to be another response letter that I had to respond to and I didn't want to get into a letter writing campaign."

<sup>8</sup> Apparently, the letter had been referred to Hart to check out.

<sup>9</sup> Keeping track of when a carrier leaves so as to determine when he will return.



and assigns overtime.<sup>10</sup> They also receive training as to safety rules. None of the 204B trainees at the Milpitas facility discipline other employees. They are paid at the lowest supervisory wage level for the actual time they spend performing 204B duties.

Sometime in April, Cicala told Camacho that Supervisor Kathy Sheehan had informed him Camacho was interested in becoming a 204B trainee. Camacho said he had not filled out an application because there did not appear to be a need for another 204B trainee. Cicala advised him to fill out an application anyway because the office was growing, and they could always use another 204B trainee. Camacho asked what kind of person Cicala was looking for in a 204B trainee. Cicala referred to Joe Haruchi as an example. He stated that Haruchi is a fine carrier who doesn't speak up, stays out of the limelight, does his job and does not make waves. Cicala further stated that he considered the 204B trainee position as the most difficult position in the office because one day you are a foreman, the next day you are a carrier, and it is very difficult for some people to balance the two.

Camacho asked, "How do you learn to be a 204B?" Cicala said, "It's an ongoing process. You learn as you go along." He said that Camacho would be assigned to one of the foremen who would teach him the routine. Cicala asked if Camacho would have any problem having a discussion with someone or writing them up. Camacho said no, because he had previous management experience. Cicala then gave an example and asked Camacho how he would handle it. Camacho explained how he would handle the situation. Cicala asked if Camacho was still interested in entering the 204B program. Camacho said yes. Cicala handed him the application, told him to fill it out, and return it on the following day.

Cicala testified that he asked Camacho into the office and asked why he had not applied for a 204B position. Camacho said he did not believe they needed another 204B trainee. Cicala suggested that this was his concern and what he was asking Camacho was if he was interested in it. Cicala said he should fill out a form if he was and, at some point during the conversation, gave him the form. They discussed the duties of a 204B trainee and Cicala gave an example of how Haruchi handled being a 204B trainee. They had some discussion as to discipline.

According to Camacho he began working as a 204B trainee on April 16 or 17. He actually worked as a 204B trainee on Mondays and Wednesdays. Monday was Sheehan's day off and Wednesdays was Polk's day off. In mid-May Camacho requested an evaluation. The evaluation took place in Cicala's office. Cicala, Sheehan, and Camacho were present. Sheehan said Camacho had done an excellent job, that he was grasping the job very easily and she had no trouble with him as a 204B trainee. Cicala said Camacho was doing a good job and asked if Camacho was satisfied with that. Camacho said he would like to do a lot more on the floor if he could. Cicala asked what he meant by that. Camacho said he would like to handle some of the responsibilities by himself. He then asked Sheehan if he could count the mail by himself while she was doing something

else. They said that could possibly be arranged. Sheehan said, "All you have to do is ask me." Camacho said, "Okay that's what we'll do next time." Camacho also said he would like to know more about scheduling. Cicala said he would have Sheehan arrange that.

However, Camacho did not thereafter count the mail by himself. According to him, the only duties that he performed by himself was the Form 1813 which is adding the number of street hours it takes a carrier to deliver the mail, checking waste mail, checking to see if mail had been missorted, and totalling up the footage from the throw back case as given to him by a clerk. He also added up timecards, did the mileage and handled phone calls and customer complaints at the clerks' windows. He assigned overtime only once when Sheehan was off and Polk went to a meeting. This was in late April. Another duty he performed by himself was to go around one-half of the room and get a return time and a leaving time from each carrier and note it on a form. There was a supervisor present except for the one time when it was Sheehan's day off and Polk went to a meeting. Polk and Sheehan worked the same shift. In the assignment of overtime, he checked with the carriers who do not wish to work overtime to find out if they have any overtime that day. If they do, the overtime has to be given to another carrier. First it is given to a part-time flexible—a permanent carrier who is guaranteed up to 30 hours. If there still exists a need for someone to work overtime, it is assigned to persons on the overtime list.

About June 1 Camacho was summoned to Cicala's office. Cicala asked Camacho whether he was "A.J." Camacho said yes. Cicala showed him the second suggestion to disband the EI program signed "A.J." and asked if Camacho wrote it. Camacho said he was aware of its contents. Cicala said, "You know I thought you were a fairly intelligent person. When I first saw your signature on the first EI suggestion to drop EI, I just dismissed it. When I saw your signature on this suggestion, I believe I gave you too much credit. I don't think you are as smart as I give you credit." Cicala further said "You may be a team player when it comes to basketball, but when it comes to the postal service, you are not a team player." He then said he would have to release Camacho from the 204B program because there was a lot of confidential information on management's side. Camacho thanked Cicala for giving him the opportunity and left.

The suggestion signed "A.J." reads,

EI IS DISCRIMINATORY. ALL DECISIONS MADE BY THE COMMITTEE AFFECT THE ENTIRE EMPLOYEE POPULATION. TO BE IN THE EI ONE HAS TO BE A UNION MEMBER, HOWEVER EI STANDS FOR EMPLOYEE INVOLVEMENT *not* UNION EMPLOYEE INVOLVEMENT. ALL DECISIONS AFFECT CLERKS AND NONUNION MEMBERS AND *that* ACTION IS BIAS [sic]. SINCE CLERKS AND NONMEMBERS ARE AFFECTED THEY SHOULD BE ABLE TO SIT IN AND VOTE/VOICE THEIR POSITION, IF NOT THE EI HAS TO BE *disbanded* OR CHANGED/OR ALL DECISIONS AFFECT ONLY TO UNION MEMBERS.  
A.J.

Cicala testified that when this suggestion was read at the EI work team meeting no one recognized the signature so it was passed over to him. He looked at it and identified the

<sup>10</sup>The collective-bargaining agreement provides that when the need for overtime arises in the letter carrier craft, employees with the necessary skills on the overtime list will be selected from that list. In all other crafts, employees are selected for overtime on a rotating basis in order of their seniority.

signature initials as those of Camacho. There was some disbelief among the work team members that Camacho had signed the suggestion since, during the critique period in an EI meeting 2 or 3 weeks earlier, Camacho had expressed his thoughts as to how well the meeting went, what great energy the team had, and that they were really accomplishing things. According to Cicala, the work team then asked him to verify the initials since he was the one who as sure it was Camacho's signature. They also expressed some concern about Camacho being on the work team if he had in fact made that suggestion.

Therefore, according to Cicala, when he met with Camacho he asked if that was his signature. Camacho said yes. Cicala said the work team would have a problem working with Camacho as a work team member and also told him he was not going to be able to use him as a 204B trainee because, as far as he was concerned, EI was a managerial program and Camacho did not represent what a manager should be representing at this time. When questioned during his testimony as to why Camacho could not be a 204B and still state that he wanted to disband the EI program, Cicala said, "I do not believe you can support management and work on the work room floor on a daily basis or an intermittent basis, whatever it is, and supervise people. When you supervise people you also have to be an example. You have to show what you stand for." Cicala further said he did not think one could represent management on one day and return to being a craft employee the next day and be against what management is doing. Cicala admits that Camacho was removed from the 204B position because he signed the "A.J." suggestion. He also testified that some of Camacho's work performance was a "side factor" in the decision. However, he did not specify what was unsatisfactory about Camacho's work, and he admits that he never told Camacho or anyone else that Camacho's work performance was a factor in his removal from the 204B program.

#### *E. The Interrogation of Lumont Gibson*

Lumont Gibson testified that in mid-May he had a conversation with Cicala in his office. Cicala said he understood Gibson wanted to participate in the 204B program, and stated that 204B trainee probably had one of the most difficult jobs in the post office because one day you are concentrating on management problems and the following day you have to concentrate on the problems on your route. He said there was no proper training for the position, that it was all on-the-job training. Cicala suggested that Gibson "keep an eye on" Haruchi, an employee in the 204B program, stating that Gibson could learn a lot just by observing him. He said Haruchi was a quiet person who keeps to himself, minds his own business, lets things go in one ear and out the other, and "does not let distractions bother him like some of these guys going to these meetings."

Cicala then said, according to Gibson, "I do not know if you have been to any." Gibson said, "I've been to a couple." Cicala said, "Well, curiosity never hurts."<sup>11</sup> Cicala said the post office was expanding, that they were going to need three supervisors and two 204B trainees. He said he did

not know exactly when Gibson would start in the 204B program, that he would have to get together with Sheehan regarding a starting date. He then discussed the various opportunities that would be available to Gibson. Gibson testified that during the first week of July, Sheehan announced to employees that Gibson and Farmer would be the 204B trainees. However, he did not actually start in the program until sometime in November.

According to Gibson, he next spoke to Cicala in October in his office. Cicala said, "It's been brought to my attention that you are one of three people that have filed a charge against me." He also mentioned something about the Union and Cicala not permitting Gibson to become a 204B trainee. Gibson did not admit filing a charge, but did mention not having the opportunity to be in the 204B program. Cicala said, "I received this paper, I saw your name on it and I didn't want to say anything until I talked with you. I wanted to make it clear that you have not talked to him personally about this matter." Gibson said he had not. Cicala asked if Gibson knew anything about the charges. Gibson said he did not.

Cicala asked if Gibson he talked to Sheehan about working the floor. Gibson said he had spoken to Sheehan in the early part of September and she told him he would be on the floor the week of September 25 but that did not happen. When he asked why, Sheehan said they were shorthanded and besides she was on vacation that week and could not give him the training he would need to start. Gibson told Cicala that was not true, that Sheehan was at work that week because Polk was on vacation and Cisneros was still out.

Cicala agreed that Sheehan was at work that particular week. He again asked Gibson if he knew anything about the charges. Gibson said no. Cicala asked if Gibson knew how his name got on the paper. Gibson said no. Cicala said, "Well, do not worry, I will talk to Sheehan in the morning, and you will be on the floor." Again Cicala asked if Gibson knew anything about the charges. Gibson said, "The only thing I did was talk to a lady about me not becoming a 204B." Cicala leaned over and said, "I'm looking in your eyes and I can tell you do not know anything about this." Gibson said, "No, I do not." Cicala said, "Do not worry. You will be on the floor. I will have a talk with Sheehan in the morning."

Gibson did start participating in the 204B program in November. According to him, his duties in the program are to count the mail in the morning. The count is then put in the computer so a determination can be made as to how many feet of mail will be going out that day. One route can take out 12 feet of mail, while another can handle 14 feet and another, 20 feet. As a 204B, he also assigns help for carriers that are not on the overtime list—those that have requested to work only 8 hours. If it appears they are going to go beyond 8 hours, help is assigned to the route so they can get back to the post office within the 8 hours. There are also carriers on the overtime list. The supervisors and 204Bs go around each morning and obtain a commitment from the carriers, as to the time they think they are going to leave the office to start their route. Using that time and the time required to do the route, a scheduled return time is computed.

The Postal Service attempts to have carriers off the street after 4 o'clock. If they see that a carrier is going to go beyond the 4 p.m. time, help will be assigned to get them back

<sup>11</sup> According to Gibson, he was referring to the meetings attended by the carriers where they discussed the problems within the post office, and he is unaware of any meetings attended by postal employees for any other purpose.

by 4 p.m. So first a determination is made as to what carriers need help. The first people assigned help are the part-time employees and then they just try to get carriers back in as soon as possible. A first priority is that people who are not on the overtime list do not work over 8 hours. Gibson testified that he does not actually select who works overtime. If someone on the overtime list comes in early, he will ask that carrier to help someone else. However, he admits if two carriers who are both on the overtime list return early, he selects one to assign to help on another route and sends the other home. In this situation, he makes the decision as to which one to send home.

According to Gibson, he has never disciplined anyone since he has been in the 204B program. The 204B trainees substitute when a supervisor is off duty. Gibson testified that he may work a day and then there can be a period of 1 to 3 weeks before he is on the floor again as a 204B trainee. When he is on the floor, he always works with one of the other supervisors, Sheehan or Polk. If he has questions, he can go to them. When he works as a 204B trainee, he receives a supervisor's pay, and he clocks in on a different timecard than the one he uses when he performs his regular job.

Cicala admits that he met with Gibson in mid-May because he was seeking employees to enter the 204B program and Sheehan had mentioned Gibson as a possibility. Gibson came to Cicala's office. Cicala described, very roughly, the duties under the 204B program and gave as an example how Haruchi handles a very difficult job. He denies that he told Gibson to be like Haruchi but admits that he told him Haruchi has a difficult job where he supervises one day and goes back to being a craft employee the next day and advised him to observe Haruchi because he was not having any problems with the transition. He told Gibson there were many things going on in the post office and that he would expect Gibson to ignore some things that were going on and concentrate on learning what he had to learn as a supervisor because it was very complex.

When questioned, at the hearing herein, as to what he was referring with regard to "things going on," Cicala said there were some meetings going on and different activities in the post office, and he wanted Gibson to concentrate on learning his position. According to him he did not tell Gibson not to attend these meetings nor did ask him whether he had attended any of the meetings. The rest of his discussion with Gibson was with regard to the general 204B program.

Cicala denies that he asked Gibson anything about charges. According to him, he had been instructed by Marguerite Breault, a paralegal specialist with the Postal Service, as to what he should and should not say. When Breault informed him that one of the allegations in the charge was that Gibson had been removed from the 204B program, he asked Breault if he could speak with Gibson, since he knew that Gibson had not been removed from the program. Breault said he would, but should not refer to the unfair labor practice charges. According to him, he called Gibson into the office on October 19 and said he was aware that Gibson was one of three people who were unhappy at not being used as a 204B trainee but did not mention the unfair labor practice charges. Gibson said he had gone to someone. Cicala said, "I am not interested in who you went to. I'm not asking that. What I am trying to do here is open up a communica-

tion line and explain to you why you have not been used." Cicala further said they were reaching a point where they were going to use Gibson; that Christmas vacations were coming up and they had to train someone else. Cicala asked if Sheehan had ever explained to Gibson why he was not being used as a 204B trainee. Gibson said no. Cicala asked if he ever asked Sheehan to be used or why he was not being used as a 204B trainee. Gibson said no. Cicala said there was a communication problem between Gibson and Sheehan and that he thought Gibson knew why he was not being used. He then told Gibson that he would be going on the floor very shortly and that Cicala would talk to Sheehan regarding starting his training.

#### IV. CONCLUSIONS

##### *A. The Refusal to Inform Employees as to Their Anniversary Dates*

The complaint alleges that the Union and the Postal Service have violated Section 8(b)(1)(A) and Section 8(a)(1) respectively by refusing to inform employees of the anniversary date of their authorization for deduction of union dues. The Union's duty in this regard is clear. Thus, it is well established that a union's duty of fair representation includes "an obligation to deal fairly with an employee's request for information" in matters affecting the employee's employment. *Operating Engineers (Associated General Contractors)*, 226 NLRB 587 (1976).

It is also well established that checkoff authorizations are matters affecting employment and that a union breaches its duty of fair representation when it fails or refuses to give an employee information needed to revoke a dues-checkoff authorization. *Hughes Aircraft Co.*, 164 NLRB 76 (1967); *Electrical Workers Local 66 (Houston Lighting Co.)*, 262 NLRB 483 (1982).

The Union contends that the facts do not support this allegation of the complaint. Basically, the Union argues that neither the NALC nor Branch 193 had the resignees' anniversary dates in their possession nor did they have control over this information. Further, the Union argues, its fiduciary obligation does not extend to obtaining information for members which is not in its possession or to situations where the Union has not misled the employees or refused to tell the employees how to obtain the information at issue; cf. *Peninsula Shipbuilders' Assn. (Newport News Shipbuilding) v. NLRB*, 663 F.2d 488 (4th Cir. 1981); *NLRB v. Teamsters Local 282*, 116 LRRM 3292 (2d Cir. 1984); or to information which the employee could readily obtain without the Union's assistance.

I find this argument somewhat disingenuous. The record establishes that an employee could obtain his/her anniversary date either by the rather simple and quick procedure of telephoning the Postal Service personnel office or by the more involved and time-consuming procedure of actually submitting a Form 1188 and having it returned with a notation as to the anniversary date. I find it incredible that Cortese did not know of the telephone procedure. Certainly he should have known. Yet, he only informed Marley of the more involved procedure. In view of the very short window period for revocation of the dues-deduction authorization, I find this to be a serious omission akin to misleading employees as to the needed information. In this regard, I note that later when

the Union was desirous of obtaining this information, it did so apparently without difficulty.

In all the circumstances, I find that Respondent Union violated Section 8(b)(1)(A) by failing and refusing to provide employees with information as to their anniversary dates or with complete information as to the procedures they can follow to obtain the information for themselves.

As to the Postal Service, the General Counsel argues that, by withholding information as to anniversary dates, the Postal Service effectively precluded the exercise of the employees' Section 7 right to revoke dues-deduction authorizations. The Postal Service argues that Cicala gave the resignees what he believed to be the proper procedure and thus, did not in fact refuse to provide anniversary dates to the resignees. In support thereof, it points to Cicala's attempt to revoke his own dues-deduction authorization from the National League of Postmasters which was returned to him because it was submitted outside the window period.

I do not credit Cicala's uncorroborated testimony that he attempted to secure the anniversary dates from the personnel office. In this regard, I note that Personnel Assistant Patty Medlin testified that the personnel office could have provided Cicala with the anniversary dates if he had requested them to do so. I further note that Cicala did not communicate to any of the resignees, either orally or in the notes he attached to the Form 1188s which he returned to them, the information he claims he received as to the "only" procedure for obtaining an employee's anniversary date. In the circumstances, I conclude that Cicala deliberately withheld from the employees information, solely within the possession of the Postal Service, as to their anniversary dates. I further find that such conduct effectively precluded, or delayed, the exercise of the resignees' Section 7 right to revoke their dues-deduction authorizations. Accordingly, I find that Respondent Postal Service thereby violated Section 8(a)(1) of the Act.

*B. The Deduction of Union Dues from the Pay of Employees after Their Resignation from the Union*

The complaint alleges that the Postal Service unlawfully assisted the Union by continuing to deduct and remit union membership dues after employees had resigned from the Union, and the Union violated Section 8(b)(1)(A) of the Act by accepting membership dues deducted from the pay of employees who have resigned from the Union. The Postal Service contends that its actions are not violative of the Act since the withholding of union dues is mandated by the PRA, 39 U.S.C. Section 1205, and its collective-bargaining agreement with NALC. Further, the Postal Service argues, the issue of revocation of union dues authorization is not appropriately before me since the Board's rationale on an identical issue was unanimously rejected by the Sixth Circuit (*Postal Service*, 833 F.2d 1495 (1987), and *NLRB v. American Postal Workers Union*, 837 F.2d 476 (1988)). Also, the same issue is presently pending before the Board on remand from the Ninth Circuit (*NLRB v. Postal Service*, 827 F.2d 548 (1987)).<sup>12</sup>

I find no merit in this latter argument. I am bound by the decisions of the Board. If Respondent feels that the court's decisions are better reasoned than the Board's decisions in

those cases, its recourse is to file exceptions to my decision in this matter. As to the alleged mandate of the PRA, the Board has concluded that the PRA does not mandate that checkoff authorizations are irrevocable per se for 1 year irrespective of the nature of the contractual obligation undertaken by the employee and that the applicable provisions of the PRA are not inconsistent with well-established Board principles regarding the revocation of dues-checkoff authorization by operation of law on effective resignation from union membership. *Postal Service*, 279 NLRB 40 (1986).

As set forth above, the Board has recently had occasion to consider the question of whether resignation from union membership revoked an almost identical dues deduction authorization as a matter of law. *Postal Service*, supra. In that case, the Board cited *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1983), in which it reiterated the well-settled rule of law applicable to this issue:

It is established Board law that a dues-checkoff authorization, or wage assignment as it is called in this case, is a contract between an employee and his employer and that a resignation of union membership ordinarily does not revoke a checkoff authorization. However, a resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself. [Footnotes omitted.]

The Board concluded that the necessary linkage of payment of union dues to union membership is established by the following language in the authorization:

I hereby assign to [union] from any salary or wages earned or to be earned by me as your employee (in my present or any future employment by you) such regular and periodic membership dues as the union may certify as due and owing from me, as may be established from time to time by said union. (Emphasis added by the Board.)

The above language is identical to that in the authorization here. Accordingly, I find that the authorizations for deduction of union dues signed by the resignees provide for the payment of union dues as a quid pro quo for union membership and not for other financial obligations, such as "financial core" payments in lieu of membership. Thus when the resignees resigned their union membership, the financial obligation underlying the execution of the authorization, i.e., the agreement to have membership dues assigned to the Union, ceased to exist for purposes of dues checkoff." Accordingly, their dues-deduction authorizations were revoked by operation of law when they resigned their union membership.

Further, even assuming arguendo that the authorizations continued, once the resignees resigned from union membership, they owed no union dues and thus, under the provision of the authorizations, the Postal Service was not authorized to make a deduction of any amount from their pay. See, Member Johansen's comment in *Postal Service*, supra at fn. 5. See also *Distillery Workers Local 80 (Capitol Hustling Co.)*, 235 NLRB 1264 (1978).

<sup>12</sup> The Union also urges that this issue be held in abeyance until the Board issues its decision on remand in that case.

Accordingly, I find that the Postal Service violated Section 8(a)(1) and (2) by continuing to deduct, and remit to the Union, union dues from the pay of the resignees after they had resigned from the Union. *Postal Service*, supra. I further find that by accepting membership dues deducted from the pay of employees after they had resigned from union membership, Respondent Union has violated Section 8(b)(1)(A) of the Act.

### C. The Removal of Camacho from the 204B Program

The Postal Service contends that, regardless of the motivation, the removal of Camacho from the 204B program was not violative of the Act because 204B trainees are supervisors within the meaning of the Act. In support thereof, the Postal Service relies on *Postal Service*, 275 NLRB 360 (1985), and *Letter Carriers*, 240 NLRB 519 (1979), where the Board found 204B trainees to be supervisors. In *Letter Carriers*, supra, the Board found that rank-and-file employees assigned as temporary supervisors under a 204(B) detail have the same authority as permanent supervisors and can discipline employees and adjust grievances on behalf of the Postal Service.

Here, the 204B trainees admittedly do not discipline employees, and there is no evidence in the record to establish that they have authority to adjust grievances. Further, their actual duties appear to be of a routine nature, which do not require independent judgment. I therefore find that Camacho is not a supervisor within the meaning of Section 2(11) of the Act.

I do not credit Cicala's testimony that Camacho's work performance was a factor in his decision to remove Camacho from the 204B program. He never specified what was unsatisfactory in Camacho's work performance, and the only reason he gave Camacho was the EI suggestion. In these circumstances, I find that the sole reason for Camacho's removal from the 204B program was his signing of the "A.J." suggestion to disband the EI program.

I also find that by signing the "A.J." suggestion, Camacho was engaged in protected concerted activity. The content of the suggestion clearly concerns a term and condition of employment, and, even though it was signed only by Camacho, it was drafted by several employees and was clearly a continuation of the activity which included the employee meetings and the earlier suggestion, signed by Camacho and seven other employees to disband the EI program.

Further, Cicala was aware of this earlier suggestion to disband the EI program and, from his conversation with Silvia, it is apparent that he knew the EI program was one of the concerns discussed by employees at the several employee meetings. I therefore find that Cicala was put on notice that the "A.J." suggestion was the product of concerted activity and knowledge of the concerted nature of the suggestion can be imputed to the Postal Service. See *Oakes Machine Corp.*, 288 NLRB 456 (1988). In these circumstances I find that Camacho was removed from the 204B program in violation of Section 8(a)(1) and (3) of the Act.

### CONCLUSIONS OF LAW

1. The United States Postal Service is subject to the jurisdiction of the National Labor Relations Board by virtue of 39 U.S.C. Section 1209.

2. National Association of Letter Carriers and National Association of Letter Carriers, Branch No. 193, each is a labor organization within the meaning of Section 2(5) of the Act.

3. By deducting, and remitting to the Union, union dues from the pay of employees who have resigned from the Union, the Postal Service has violated Section 8(a)(1) and (2) of the Act.

4. By interrogating an employee and by failing and refusing to provide employees, on their request, with the anniversary dates of their authorizations for deduction of union dues, the Postal Service has violated Section 8(a)(1) of the Act.

5. By removing Anthony Camacho from the 204B program because he engaged in a concerted expression of opposition to an employee involvement program negotiated between the Postal Service and the Union, the Postal Service has violated Section 8(a)(1) and (3) of the Act.

6. By accepting union membership dues withheld by the Postal Service from employees' pay notwithstanding the employees' resignation from membership in Branch 193, and by failing and refusing to provide employees, upon their request, with the anniversary dates of their authorizations for deduction of union dues, NALC and Branch 193 have violated Section 8(b)(1)(A) of the Act.

### THE REMEDY

Having found that Respondent Postal Service and Respondent Union have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A), respectively, of the Act, we shall order that they cease and desist therefrom and take certain affirmative action necessary to effectuate the purposes of the Act.

Having found that Respondent Postal Service removed Anthony Camacho from the 204B program in violation of Section 8(a)(3) and (1) of the Act, it is recommended that Respondent Postal Service be ordered to offer Camacho immediate and full reinstatement to the 204B program without prejudice to his seniority or other benefits or privileges that flow from participation in such program and that he be made whole for any loss of earnings incurred as a result of the discrimination against him, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). It is further recommended that Respondent Postal Service, Respondent NALC, and Respondent Branch 193 jointly and severally make whole each employee from whose pay union dues were deducted after his/her resignation from the Union for any monetary loss he/she may have suffered by reason of the unlawful withholding of union dues from his/her pay after he/she had effectively resigned from union membership. All interest is to be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]